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No. 88-164

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THE WEYERHAEUSER COMPANY,
Petitioner,

v.

RUBEN BRACAMONTES, REYES PEREZ, and PABLO MARTINEZ,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the United States Court of Appeals for the Fifth Circuit in *Bracamontes v. The Weyerhaeuser Co.*, 840 F.2d 271 (5th Cir.), *reh'g denied*, 845 F.2d 1022 (5th Cir. 1988). The opinion of the district court is unreported. *Bracamontes v. The Weyerhaeuser Co.*, No. B-87-029 (S.D. Tex. Apr. 15, 1987), Pet. App. B.

STATEMENT OF THE CASE

Respondents are three migrant workers from the Rio Grande Valley of Texas who, during the winter

of 1986, planted pine seedlings in forests owned by The Weyerhaeuser Co. in Mississippi and Alabama. They filed this case as a class action against Weyerhaeuser and several of its crewleaders in 1987 for violations of the registration, disclosure, record-keeping, transportation and housing provisions of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §§ 1801-1872 (Supp. 1988). Plaintiffs requested that the court enjoin Weyerhaeuser from using crewleaders who had not been authorized by the United States Department of Labor to recruit, transport, drive, or house migrant agricultural workers.

The district court dismissed the action on the ground that "agricultural employment" did not comprehend forestry within the meaning of AWPA. *Bracamontes v. The Weyerhaeuser Co.*, No. B-87-029 (S.D. Tex. Apr. 15, 1987), Pet. App. B. The Fifth Circuit reversed on appeal. Unanimously holding that "Congress intended that agricultural employment include forestry operations even when not performed on a traditional farm," the Court of Appeals ruled that "appellants, who planted pine seedlings for Weyerhaeuser, are migrants as defined by the Act and consequently are entitled to its protection." *Bracamontes v. The Weyerhaeuser Co.*, 840 F.2d 271, 276 (5th Cir.), *reh'g denied*, 845 F.2d 1022 (5th Cir. 1988).

Weyerhaeuser filed its petition for writ of certiorari on July 25, 1988, a copy of which was received by Respondents on July 28, 1988.

REASONS FOR DENYING THE PETITION FOR CERTIORARI

A. Certiorari Should Be Denied Because Petitioner Has Not Shown That This Case Meets the Demanding Standards of Supreme Court Rule 17

Petitioner has not even attempted to adduce any of the "special and important reasons" which the Court has prescribed as prerequisites for the discretionary grant of review on writ of certiorari. Sup. Ct. R. 17.1 sets out three considerations governing review that are germane to the determination of Weyerhaeuser's petition; they indicate that the Court may grant discretionary review in the following circumstances:

> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another court of appeals in the same matter; . . . or has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision.
>
> (c) When a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court . . . .

Sup. Ct. R. 17.1. Each of these considerations will be reviewed in turn.

1. All Three Federal Courts of Appeals That Have Ruled on the Issue Agree that Forestry Workers Are Engaged in Agricultural Employment for the Purposes of the Migrant and Seasonal Agricultural Worker Protection Act

Perhaps the most frequently invoked ground for the exercise of this Court's certiorari jurisdiction is the

need to resolve conflicts among the circuits on important issues of law. That reason certainly is not present where Petitioner requests that the Court review a question on which all three circuits that have addressed the issue are in unanimous agreement. Applying the same canons of interstitial statutory interpretation and viewing the legislative history in the same light, the Fifth, Ninth and Eleventh Circuits have all concluded that migrant workers employed in forestry work are covered by the protections of AWPA. First the Eleventh Circuit decided that forestry crewleaders were engaged in agricultural labor under the provisions of the Farm Labor Contractor Registration Act, 7 U.S.C. § 2042(d) (1974), the statutory predecessor to AWPA, in *Davis Forestry Corp. v. Smith*, 707 F.2d 1325, 1328 n.3 (11th Cir. 1983); then the Ninth Circuit, in a case involving the United States Forest Service, the United States Department of Labor, and forestry crewleaders held that for the purposes of AWPA, the term "agricultural employment" encompasses forestry operations. *Bresgal v. Brock*, 833 F.2d 763 (9th Cir. 1987), *modified*, 843 F.2d 1163 (9th Cir. 1988).

Most recently, in a unanimous opinion, the Fifth Circuit joined the other two circuits in reaching the same conclusion in this case. *Bracamontes v. The Weyerhaeuser Co.*, 840 F.2d 271 (5th Cir.), *reh'g denied*, 845 F.2d 1022 (5th Cir. 1988). No other courts of appeal have considered the question.

Weyerhaeuser admits that there is uniformity of agreement among the circuits on the coverage issue. Instead it merely—and in the context of this Court's certiorari jurisdiction, irrelevantly—claims that all three circuits decided the question erroneously. The

workers, who allege that they were recruited by contractors in violation of the Act, were transported in an unsafe, uninsured vehicle, and were housed in an uninspected, unheated house in freezing weather, believe that the decision below properly interpreted the intent of Congress to extend the protections the Act to migrants who plant trees, regardless of whether the trees were of the timber or the fruit variety.

2. No Claim Has Been Made That the Court of Appeals Has Departed From the Accepted and Usual Course of Judicial Proceedings so as to Require the Exercise of the Court's Power of Supervision

Weyerhaeuser has not suggested that the decision of the Fifth Circuit is such a radical departure from the "accepted and usual course of judicial proceedings" as to justify this Court's exercise of its supervisory powers over the lower courts. The Company's primary argument is that the Court of Appeal usurped the legislative function in attempting to divine the intent of Congress with respect to coverage under the Act. Plaintiffs disagree, of course. But more important to the exercise of the Court's certiorari jurisdiction is the question of whether the Fifth Circuit ventured beyond the pale of traditional statutory interpretation.

In its quest for Congressional intent the circuit court looked first to the language of the statute,[1] then to the legislative history of the 1974 amendments to

[1] "The term 'agricultural employment' means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 203(f)), or section 312(g) of Title 26 and the . . . planting . . . of any agricultural or horticultural commodity in its unmanufactured state." 29 U.S.C. § 1802(3).

the predecessor statute.[2] The court examined the remedial purposes of the Act, gave appropriate deference to the administrative interpretation of the Act by the Department of Labor, and reviewed the decisions of the other two circuit courts that had contemplated the same issue. Weyerhaeuser complains only of the result achieved, not of the process followed. The Fifth Circuit properly exercised its traditional judicial function in determining the intent of Congress.

3. Whether Forestry Workers are Engaged in Agricultural Employment for the Purposes of AWPA Does Not Constitute "an Important Question of Federal Law Which . . . Should be Settled by this Court"

To be sure, to the migrant farm workers who plant trees for Weyerhaeuser and other timber companies the question as to whether they are protected by AWPA is of great significance. The importance of an issue to the litigants is not, however, an appropriate criterion by which the certiorari jurisdiction of this Court is invoked. Rather, that criterion is whether the issue falls within the scope of the nationally significant jurisprudence that it is the exclusive function of the Supreme Court to shape. Manifestly, a question of statutory interpretation affecting only a minuscule sector of the labor force—especially where it has been identically resolved by three courts of appeal—cannot press a serious claim on the discretionary docket of this Court.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari to review the decision of the United States

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[2] Farm Labor Contractor Registration Act of 1963, 7 U.S.C. §§ 2042-2058 (repealed 1983).

Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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